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15 Attorneys for Plaintiff
16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT
18
19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,) CR No. 05-316-DSF
21)
Plaintiff,) PLEA AGREEMENT FOR DEFENDANT
22) RICHARD B. LEONARD
v.)
23)
JOHN S. LIPTON, et al.,)
24)
Defendants.)
25)
26)

27 1. This constitutes the plea agreement between RICHARD B.
28 LEONARD ("defendant") and the United States Attorney's Office for

1 the Central District of California and the Tax Division of the
2 United States Department of Justice (collectively, the "Offices")
3 in the above-captioned case. This agreement is limited to the
4 Offices and cannot bind any other federal, state or local
5 prosecuting, administrative or regulatory authorities.

6 PLEA

7 2. Defendant agrees to plead guilty to count 68 of the
8 indictment in United States v. John S. Lipton, et al, CR 05-316-
9 DSF, and defendant further gives up the right to indictment by a
10 grand jury and agrees to plead guilty to a one-count information
11 in the form attached to this agreement or a substantially similar
12 form.

13 NATURE OF THE OFFENSES

14 3. In order for defendant to be guilty of count 68 of the
15 indictment, which charges a violation of Title 18, United States
16 Code, Section 371, the following must be true:

17 First: From July 1994 to May 2005, there was an agreement
18 between two or more persons to defraud an agency of the United
19 States, specifically the Department of the Treasury;

20 Second: Defendant became a member of the conspiracy knowing
21 of its object and intending to help accomplish it; and

22 Third: One of the members of the conspiracy performed at
23 least one overt act for the purpose of carrying out the
24 conspiracy.

25 4. In order for defendant to be guilty of count one of the
26 information, which charges a violation of Title 26, United States
27 Code, Section 7201, the following must be true:

1 First: Defendant owed federal income tax for the calendar
2 year at issue;

3 Second: Defendant knew that he owed federal income tax for
4 said calendar year;

5 Third: Defendant made an affirmative attempt to evade or
6 defeat assessment and payment of said income tax; and

7 Fourth: In attempting to evade or defeat such additional
8 tax, the defendant acted willfully, that is, his actions were not
9 due to accident, mistake or negligence.

10 5. Defendant admits that defendant is, in fact, guilty of
11 these offenses as described in count 68 of the indictment and
12 count one of the information.

13 PENALTIES AND RESTITUTION

14 6. The statutory maximum sentence that the Court can impose
15 for a violation of Title 18, United States Code, Section 371 is:
16 five years imprisonment; a three-year period of supervised
17 release; a fine of \$250,000 or twice the gross gain or gross loss
18 resulting from the offense, whichever is greatest; and a
19 mandatory special assessment of \$100. The statutory maximum
20 sentence that the Court can impose for a violation of Title 26,
21 United States Code, Section 7201 is: five years imprisonment; a
22 three-year period of supervised release; a fine of \$250,000 or
23 twice the gross gain or gross loss resulting from the offense,
24 whichever is greatest; and a mandatory special assessment of
25 \$100.

26 7. The Court may order defendant to pay any additional
27 taxes, interest and penalties that defendant owes to the United
28 States. Also, the Court may order defendant to pay the costs of

1 prosecution, which may be in addition to the statutory maximum
2 fine stated above.

3 8. Therefore, the total maximum sentence for the offenses
4 to which defendant is pleading guilty is: ten years imprisonment;
5 a three-year period of supervised release; a fine of \$500,000 or
6 twice the gross gain or gross loss resulting from the offenses,
7 whichever is greatest; all additional taxes, interest and
8 penalties that defendant owes to the United States; costs of
9 prosecution; and a mandatory special assessment of \$200.

10 9. Defendant agrees to make full restitution for the losses
11 caused by defendant's activities. The Offices currently believe
12 that the applicable amount of restitution is \$3,000,000, but
13 recognize and agree that this amount could change based on facts
14 that come to the attention of the parties prior to sentencing.
15 Defendant further agrees that defendant will not seek the
16 discharge of any restitution obligation, in whole or in part, in
17 any present or future bankruptcy proceeding.

18 10. Supervised release is a period of time following
19 imprisonment during which defendant will be subject to various
20 restrictions and requirements. Defendant understands that if
21 defendant violates one or more of the conditions of any
22 supervised release imposed, defendant may be returned to prison
23 for all or part of the term of supervised release, which could
24 result in defendant serving a total term of imprisonment greater
25 than the statutory maximum stated above.

26 11. Defendant also understands that, by pleading guilty,
27 defendant may be giving up valuable government benefits and
28 valuable civic rights, such as the right to vote, the right to

1 possess a firearm, the right to hold office, and the right to
2 serve on a jury.

3 12. Defendant further understands that the conviction in
4 this case may subject defendant to various collateral
5 consequences, including but not limited to deportation,
6 revocation of probation, parole, or supervised release in another
7 case, and suspension or revocation of a professional license.
8 Defendant understands that unanticipated collateral consequences
9 will not serve as grounds to withdraw defendant's guilty plea.

10 13. Defendant Leonard acknowledges that he was not
11 extradited by the Costa Rican government for violating 26 U.S.C.
12 Section 7201, and that he waives any rights, benefits or other
13 defenses he may have had under the doctrines of dual criminality
14 and the rule of specialty for the 26 U.S.C. Section 7201 charge
15 by pleading guilty.

16 FACTUAL BASIS

17 14. Defendant and the Offices agree and stipulate to the
18 statement of facts set forth in Exhibit A hereto. This statement
19 of facts is sufficient to support pleas of guilty to the charges
20 described in this agreement and to establish the sentencing
21 guideline factors set forth in paragraph 17 below. It is not
22 meant to be a complete recitation of all facts relevant to the
23 underlying criminal conduct or all facts known to either party
24 that relate to that conduct.

25 WAIVER OF CONSTITUTIONAL RIGHTS

26 15. By pleading guilty, defendant gives up the following
27 rights:

28 a) The right to persist in a plea of not guilty.

1 b) The right to a speedy and public trial by jury.

2 c) The right to the assistance of legal counsel at
3 trial, including the right to have the Court appoint counsel for
4 defendant for the purpose of representation at trial. (In this
5 regard, defendant understands that, despite his pleas of guilty,
6 he retains the right to be represented by counsel -- and, if
7 necessary, to have the court appoint counsel if defendant cannot
8 afford counsel -- at every other stage of the proceeding.)

9 d) The right to be presumed innocent and to have the
10 burden of proof placed on the government to prove defendant
11 guilty beyond a reasonable doubt.

12 e) The right to confront and cross-examine witnesses
13 against defendant.

14 f) The right, if defendant wished, to testify on
15 defendant's own behalf and present evidence in opposition to the
16 charges, including the right to call witnesses and to subpoena
17 those witnesses to testify.

18 g) The right not to be compelled to testify, and, if
19 defendant chose not to testify or present evidence, to have that
20 choice not be used against defendant.

21 By pleading guilty, defendant also gives up any and all
22 rights to pursue any affirmative defenses, Fourth Amendment or
23 Fifth Amendment claims, and other pretrial motions that have been
24 filed or could be filed.

25 SENTENCING FACTORS

26 16. Defendant understands that the Court is required to
27 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
28 including the kinds of sentence and sentencing range established

under the United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines"), in determining defendant's sentence. Defendant further understands that the Sentencing Guidelines are advisory only, and that after considering the Sentencing Guidelines and the other § 3553(a) factors, the Court may be free to exercise its discretion to impose any reasonable sentence up to the maximum set by statute for the crimes of conviction.

17. Defendant and the Offices agree and stipulate to the following applicable Sentencing Guidelines factors:

| | | | |
|------------------------------|---|----|-------------------------------------|
| Base Offense Level | : | 24 | U.S.S.G. §§2T1.1(a)(1); 2T4.1(J) |
| Use of Sophisticated Means | : | +2 | U.S.S.G. § 2T1.1(b)(2) |
| Acceptance of Responsibility | : | -3 | U.S.S.G. § 3E1.1 |
| Total Offense Level | : | 23 | |

The Offices will agree to a downward adjustment for acceptance of responsibility and, if applicable, move for an additional level under § 3E1.1(b) only if the conditions set forth in paragraph 20 are met. Subject to paragraph 18, defendant and the Offices agree not to seek, argue, or suggest in any way, either orally or in writing, that any other specific offense characteristics, adjustments or departures, relating to either the applicable Offense Level or the Criminal History Category, be imposed. If, however, after signing this agreement but prior to sentencing, defendant were to commit an act, or the Offices were to discover a previously undiscovered act committed by defendant prior to signing this agreement, which act, in the judgment of the Offices, constituted obstruction of justice

1 within the meaning of U.S.S.G. § 3C1.1, the Offices would be free
2 to seek the enhancement set forth in that section.

3 Defendant and the Offices also agree and stipulate that,
4 taking into account the factors listed in 18 U.S.C. § 3553(a)(1)-
5 (7), including the defendant's age and health, the relevant
6 Sentencing Guidelines represent a reasonable basis for the Court
7 to determine defendant's sentence in this case, and agree that
8 defendant should be sentenced to a sentence of time served. The
9 recommended sentence of time served is the equivalent of a 46-
10 month sentence (the low end of the applicable guidelines range
11 for offense level 23 and Criminal History Category I), taking
12 into account "good time" credit for the defendant. The Offices
13 are free to argue that a condition of supervised release be that
14 defendant serve a portion of his term of supervised release in a
15 community treatment facility which can accommodate defendant's
16 medical needs. The defendant is free to argue against said
17 condition of supervised release. The defendant and the Offices
18 agree that defendant may recommend that defendant be transferred
19 to Gateways, a community treatment center, after the entry of his
20 guilty pleas as soon as that facility has an appropriate opening
21 for defendant; the Offices agree not to oppose defendant's
22 transfer to Gateways after the entry of his pleas of guilty.

23 18. There is no agreement as to defendant's criminal
24 history or criminal history category.

25 19. The stipulations in this agreement do not bind either
26 the United States Probation Office or the Court. Both defendant
27 and the Offices are free to: (a) supplement the facts by
28 supplying relevant information to the United States Probation

1 Office and the Court, (b) correct any and all factual
2 misstatements relating to the calculation of the sentence, and
3 (c) argue on appeal and collateral review that the Court's
4 Sentencing Guidelines calculations are not error, although each
5 party agrees to maintain its view that the calculations in
6 paragraph 17 are consistent with the facts of this case.

7 DEFENDANT'S OBLIGATIONS

8 20. Defendant agrees that he will:

9 a) Plead guilty as set forth in this agreement.

10 b) Not knowingly and willfully fail to abide by all
11 sentencing stipulations contained in this agreement.

12 c) Not knowingly and willfully fail to: (i) appear for
13 all court appearances, (ii) surrender as ordered for service of
14 sentence, (iii) obey all conditions of any bond, and (iv) obey
15 any other ongoing court order in this matter.

16 d) Not commit any crime; however, offenses which would
17 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
18 not within the scope of this agreement.

19 e) Not knowingly and willfully fail to be truthful at
20 all times with Pretrial Services, the U.S. Probation Office, and
21 the Court.

22 f) Pay the applicable special assessments at or before
23 the time of sentencing unless defendant lacks the ability to pay
24 and submits a completed financial statement (form OBD-500) to the
25 United States Attorney's Office prior to sentencing.

26 21. Defendant admits that defendant received unreported
27 income for 1994 through 2005, inclusive. Defendant agrees to
28 cooperate with the Internal Revenue Service in the determination

1 of defendant's tax liability for 1994-2005, inclusive. Defendant
2 agrees:

3 a) That defendant will file, prior to the time of
4 sentencing, initial and/or amended returns for the years subject
5 to the above admissions, correctly reporting unreported
6 individual income, and will, if requested to do so by the
7 Internal Revenue Service, provide the Internal Revenue Service
8 with information regarding the years covered by the returns, and
9 agrees to pay any additional taxes within 180 days after
10 sentencing, and will pay promptly all penalties and interest
11 assessed by the Internal Revenue Service to be owing as a result
12 of any computational error(s).

13 b) That nothing in this agreement forecloses or limits
14 the ability of the Internal Revenue Service to examine and make
15 adjustments to defendant's returns after they are filed.

16 c) That defendant will not, after filing the returns,
17 file any claim for refund of taxes, penalties, or interest for
18 amounts attributable to the returns filed in connection with this
19 plea agreement.

20 THE OFFICES' OBLIGATIONS

21 22. If defendant complies fully with all defendant's
22 obligations under this agreement, the Offices agree:

23 a) To abide by all sentencing stipulations contained in
24 this agreement.

25 b) At the time of sentencing to move to dismiss the
26 remaining counts of the indictment as against defendant.
27 Defendant agrees, however, that at the time of sentencing the
28 Court may consider the dismissed counts in determining the

1 applicable Sentencing Guidelines range, where the sentence should
2 fall within that range, the propriety and extent of any departure
3 from that range, and the determination of the sentence to be
4 imposed after consideration of the Sentencing Guidelines and all
5 other relevant factors under 18 U.S.C. § 3553(a).

6 c) Not to further prosecute defendant for violations
7 arising out of the following conduct: (i) the subject matter of
8 the charges set forth in United States v. John S. Lipton, et al.,
9 Criminal Case No. CR 05-316-DSF; and (ii) the subject matter of
10 the charge set forth in the accompanying information to this
11 agreement. Defendant understands that the Offices are free to
12 prosecute defendant for any other unlawful past conduct or any
13 unlawful conduct that occurs after the date of this agreement.
14 Defendant agrees that at the time of sentencing the Court may
15 consider the uncharged conduct in determining the applicable
16 Sentencing Guidelines range, where the sentence should fall
17 within that range, the propriety and extent of any departure from
18 that range, and the determination of the sentence to be imposed
19 after consideration of the sentencing guidelines and all other
20 relevant factors.

21 d) At the time of sentencing, provided that defendant
22 demonstrates an acceptance of responsibility for the offenses up
23 to and including the time of sentencing, to recommend a two-level
24 reduction in the applicable sentencing guideline offense level,
25 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,
26 move for an additional one-level reduction if available under
27 that section.

28 //

BREACH OF AGREEMENT

23. If defendant, at any time after the execution of this agreement, knowingly violates or fails to perform any of defendant's agreements or obligations under this agreement ("a breach"), the Offices may declare this agreement breached. If the Offices declare this agreement breached at any time following its execution, and the Court finds such a breach to have occurred, then: (a) if defendant has previously entered [a] guilty pleas, defendant will not be able to withdraw the guilty pleas, and (b) the Offices will be relieved of all of its obligations under this agreement.

24. Following the Court's finding of a knowing and willful breach of this agreement by defendant, should the Offices elect to pursue any charge that was either dismissed or not filed as a result of this agreement, then:

a) Defendant agrees that any applicable statute of limitations is tolled between the date of defendant's signing of this agreement and the commencement of any such prosecution or action.

b) Defendant gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such prosecution, except to the extent that such defenses existed as of the date of defendant's signing this agreement.

c) Defendant agrees that: (i) any statements made by defendant, under oath, at the guilty plea hearing (if such a hearing occurred prior to the breach); (ii) the stipulated factual basis statement in this agreement; and (iii) any evidence

1 derived from such statements, are admissible against defendant in
2 any such prosecution of defendant, and defendant shall assert no
3 claim under the United States Constitution, any statute, Rule 410
4 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules
5 of Criminal Procedure, or any other federal rule, that the
6 statements or any evidence derived from any statements should be
7 suppressed or are inadmissible.

8 LIMITED MUTUAL WAIVER OF APPEAL

9 25. Defendant gives up the right to appeal any sentence
10 imposed by the Court, including any order of restitution, and the
11 manner in which the sentence is determined, provided that (a) the
12 sentence is within the statutory maximum specified above and is
13 constitutional, and (b) the Court imposes a sentence within or
14 below the range corresponding to a total offense level of 23, and
15 the applicable criminal history category as determined by the
16 Court. Notwithstanding the foregoing, defendant retains any
17 ability defendant has to appeal the amount or terms of any
18 restitution order and the Court's determination of defendant's
19 criminal history category and the conditions of supervised
20 release imposed by the Court, with the exception of the
21 following: conditions set forth in General Orders 318, 01-05,
22 and/or 05-02 of this Court; the drug testing conditions mandated
23 by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug
24 use conditions authorized by 18 U.S.C. § 3563(b)(7).

25 26. The Offices give up its right to appeal the sentence,
26 provided that (a) the sentence is within the statutory maximum
27 specified above and is constitutional, and (b) the Court imposes
28 a sentence within or above the range corresponding to a total

1 offense level of 23, and the applicable criminal history category
2 as determined by the Court.

3 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

4 27. Defendant agrees that if either count of conviction is
5 vacated, reversed, or set aside, the Offices may: (a) ask the
6 Court to resentence defendant on the remaining counts of
7 conviction, with both the Offices and defendant being released
8 from any stipulations regarding sentencing contained in this
9 agreement, (b) ask the Court to void the entire plea agreement
10 and vacate defendant's guilty plea on the remaining count of
11 conviction, with both the Offices and defendant being released
12 from all of their obligations under this agreement, or (c) leave
13 defendant's remaining conviction, sentence, and plea agreement
14 intact. Defendant agrees that the choice among these three
15 options rests in the exclusive discretion of the Offices.

16 COURT NOT A PARTY

17 28. The Court is not a party to this agreement and need not
18 accept any of the Office's sentencing recommendations or the
19 parties' stipulations. Even if the Court ignores any sentencing
20 recommendation, finds facts or reaches conclusions different from
21 any stipulation, and/or imposes any sentence up to the maximum
22 established by statute, defendant cannot, for that reason,
23 withdraw defendant's guilty pleas, and defendant will remain
24 bound to fulfill all defendant's obligations under this
25 agreement. No one -- not the prosecutor, defendant's attorney,
26 or the Court -- can make a binding prediction or promise
27 regarding the sentence defendant will receive, except that it
28 will be within the statutory maximum.

NO ADDITIONAL AGREEMENTS

29. Except as set forth herein, there are no promises, understandings or agreements between the Offices and defendant or defendant's counsel. Nor may any additional agreement, understanding or condition be entered into unless in a writing signed by all parties or on the record in court.

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

30. The parties agree and stipulate that this Agreement will be considered part of the record of defendant's guilty plea hearing as if the entire Agreement had been read into the record of the proceeding.

This agreement is effective upon signature by defendant and an Assistant United States Attorney.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

THOMAS P. O'BRIEN
United States Attorney

RANEE A. KATZENSTEIN
Assistant United States Attorney

12/1/08
Date

TAX DIVISION, UNITED STATES DEPARTMENT OF JUSTICE

NANETTE L. DAVIS
ELLEN M. QUATTRUCCI
DANNY N. ROETZEL
Trial Attorneys

Date

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3 understandings or agreements between the Offices and defendant or
4 defendant's counsel. Nor may any additional agreement,
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9 will be considered part of the record of defendant's guilty plea
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11 of the proceeding.

12 This agreement is effective upon signature by defendant and
13 an Assistant United States Attorney.

14 AGREED AND ACCEPTED

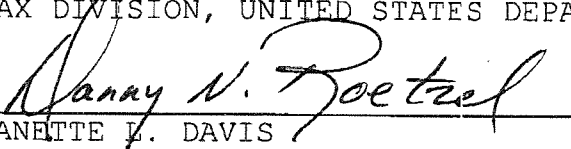
15 UNITED STATES ATTORNEY'S OFFICE
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 THOMAS P. O'BRIEN
18 United States Attorney

19 _____
20 RANEE A. KATZENSTEIN
21 Assistant United States Attorney


Date

22 TAX DIVISION, UNITED STATES DEPARTMENT OF JUSTICE

23 
24 NANETTE L. DAVIS
25 ELLEN M. QUATTRUCCI
26 DANNY N. ROETZEL
27 Trial Attorneys
28

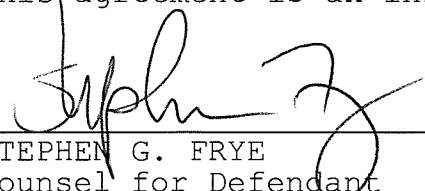
Date

1 I have read this agreement and carefully discussed every
 2 part of it with my attorney. I understand the terms of this
 3 agreement, and I voluntarily agree to those terms. My attorney
 4 has advised me of my rights, of possible defenses, of the
 5 sentencing factors set forth in 18 U.S.C. § 3553(a), of the
 6 relevant Sentencing Guidelines provisions, and of the
 7 consequences of entering into this agreement. No promises or
 8 inducements have been given to me other than those contained in
 9 this agreement. No one has threatened or forced me in any way to
 10 enter into this agreement. Finally, I am satisfied with the
 11 representation of my attorney in this matter.

12
 13
 14 
 15 RICHARD B. LEONARD
 Defendant

11/26/08
 Date

16 I am RICHARD B. LEONARD's attorney. I have carefully
 17 discussed every part of this agreement with my client. Further,
 18 I have fully advised my client of his [or her] rights, of
 19 possible defenses, of the sentencing factors set forth in 18
 20 U.S.C. § 3553(a), of the relevant Sentencing Guidelines
 21 provisions, and of the consequences of entering into this
 22 agreement. To my knowledge, my client's decision to enter into
 23 this agreement is an informed and voluntary one.

24
 25 
 26 STEPHEN G. FRYE
 Counsel for Defendant
 RICHARD B. LEONARD

11/26/08
 Date